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November 9, 2010

The Honorable Tom Harkin
Chairman
The Honorable Michael B. Enzi
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable George Miller
Chairman
The Honorable John Kline
Ranking Minority Member
Committee on Education and Labor
House of Representatives

Subject: *Department of Labor, Employee Benefits Security Administration: Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Labor, Employee Benefits Security Administration (EBSA), entitled “Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans” (RIN: 1210-AB07). We received the rule on October 25, 2010. It was published in the *Federal Register* as a final rule on October 20, 2010. 75 Fed. Reg. 64,910.

The final rule requires the disclosure of certain plan and investment-related information, including fee and expense information, to participants and beneficiaries in participant-directed individual account plans. EBSA’s intention is that this rule will ensure that all participants and beneficiaries in participant-directed individual account plans have the information they need to make informed decisions about the management of their individual accounts and the investment of their retirement savings. The rule also contains conforming changes to another regulation relating to plans that allow participants to direct the investments of their individual accounts. This rule will affect plan sponsors, fiduciaries, participants and beneficiaries of participant-directed individual account plans, as well as providers of services to such plans.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). This rule was published on October 20, 2010, and received on October 25, 2010. This final rule has a stated effective date of December 20, 2010. However, the rule has a later applicability date; it will apply to individual account plans for plan years beginning on or after November 1, 2011. To the extent that the provisions of this rule go into effect on December 20, 2010, it does not have the required 60-day delay.

Enclosed is our assessment of EBSA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that EBSA complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Phyllis C. Borzi
Assistant Secretary, Employee
Benefits Security Administration
Department of Labor

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF LABOR,
EMPLOYEE BENEFITS SECURITY ADMINISTRATION
ENTITLED
"FIDUCIARY REQUIREMENTS FOR DISCLOSURE IN
PARTICIPANT-DIRECTED INDIVIDUAL ACCOUNT PLANS"
(RIN: 1210-AB07)

(i) Cost-benefit analysis

The Department of Labor, Employee Benefits Security Administration (EBSA), analyzed the costs and benefits of this final rule and concluded that the benefits of the rule justify its costs. EBSA identified two primary benefits of this rule: (1) reduced time for plan participants to collect investment-related information and organize it into a format that allows the information to be compared and (2) improved investment results for plan participants due to the enhanced disclosures available to them. EBSA estimates that the present value of the benefits over the 10-year period 2012–2021 will be about \$14.9 billion, with a low estimate of \$7.2 billion and a high estimate of \$29.9 billion.

EBSA expects the costs of this final rule to include: (1) costs due to upfront review and updating of plan documents, (2) costs due to production of quarterly dollar amount disclosures, (3) costs due to assembling required information for chart and web site, (4) costs due to the web site requirement, (5) cost of distribution and materials for disclosures, and (6) discouragement of some employers from sponsoring a retirement plan. EBSA estimates that the present value of the costs over the 10-year period 2012–2021 will be \$2.7 billion, with a low estimate of \$2.0 billion and a high estimate of \$3.3 billion. Overall, EBSA estimates that this final rule will generate a net present value (or net present benefit) of almost \$12.3 billion.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603–605, 607, and 609

EBSA prepared a final Regulatory Flexibility Analysis for this final rule. The analysis discussed the need for and the objectives of the rule; public comments related to small entities; and a review of duplicative, overlapping, and conflicting rules. EBSA estimates that this rule will apply to approximately 419,000 small plans covering approximately 9.5 million participants. EBSA estimated the compliance costs for one-participant plans to be less than \$873 in the first year and \$669 in subsequent years.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

EBSA determined that this final rule does not include any federal mandate resulting in expenditures by state, local, or tribal governments in the aggregate of more than \$100 million or increased expenditures by the private sector of more than \$100 million.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On April 25, 2007, EBSA published a request for suggestions, comments, and views from interested parties on a variety of issues relating to the disclosure of plan and investment related fee and expense and other information to participants and beneficiaries in participant-directed individual account plans. 72 Fed. Reg. 20,457. After reviewing the over 100 responses, EBSA next published a notice of proposed rulemaking on July 23, 2008. 73 Fed. Reg. 43,014. EBSA received over 90 written public comments on the proposed rule from a variety of parties, including plan sponsors and fiduciaries, plan service providers, financial institutions, and employee benefit plan and participant representatives. In addition, EBSA conducted a series of focus group studies concerning how participants generally make choices among their employee benefit plan's investment alternatives, and, specifically, how participants would react to the Model Comparative Chart for plan investment alternatives. EBSA discussed the public comments and other feedback in the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501–3520

EBSA determined that this rule contains an information collection requirement under the Act entitled “Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans,” which has been submitted to the Office of Management and Budget (OMB) for review under OMB Control Number 1210-0090. EBSA estimates that this information collection requirement will have 483,000 respondents providing 738,207,000 responses annually for a total estimated burden of 6,583,000 hours in the first year and 5,520,000 hours in each subsequent year with a total cost of \$221,040,000 in the first year and \$201,225,000 in each subsequent year.

Statutory authorization for the rule

EBSA promulgated this final rule under the authority of section 1135 of title 29, United States Code, and section 657 of Public Law 107-16, 115 Stat. 38, 135–136 (June 7, 2001).

Executive Order No. 12,866 (Regulatory Planning and Review)

EBSA determined that this is an economically significant rule under the Order because it is likely to have an effect on the economy of \$100 million or more in any one year and therefore subject to review by OMB.

Executive Order No. 13,132 (Federalism)

EBSA determined that this final rule does not have federalism implications because it has no substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.